



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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PAUL R. LEPAGE  
GOVERNOR

PATRICIA W. AHO  
COMMISSIONER

MEMORANDUM

DATE: December 1, 2011

TO: Board of Environmental Protection  
FROM: Lisa Vickers, Project Manager  
RE: Appeal by Mary Dowd (appellant) of Peter Benard Order (#L-25260-L3-A-N and #L-25260-TC-B-N)

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**Statutory and Regulatory References:** Site Location of Development Law (Site Law), 38 M.R.S.A. §§ 481- 490, Natural Resources Protection Act (NRPA), 480-A-480-GG, and Chapter 2 of the Department Rules.

**Location:** The project is located in Yarmouth on Hillside Street and is identified as Lot 4 of Tax Map 44.

**Description:** In Department Orders #L-25260-L3-A-N and #L-25260-TC-B-N, dated July 1, 2011, the Department granted a Site Law and a NRPA permit to Peter Benard for McKearney Village, a 38-lot residential subdivision, located on a 58.2-acre parcel of land on Hillside Street in the Town of Yarmouth. The development includes 10,150 square feet of forested, freshwater wetland alterations for road crossings and 32 acres of the parcel will be preserved as open space and donated to the Town of Yarmouth.

**Discussion and Department Recommendation:** Department Rules Concerning the Processing of Applications and Other Administrative Matters, Chapter 2 § 24 (B)(1) provides that “an aggrieved person” may appeal a Commissioner’s decision on an application to the Board for review. The appellant filed a timely appeal on July 29, 2011 with additional information submitted on August 1, 2011.

As set forth in section 24(B)(2), the written notice of the appeal must include evidence demonstrating the appellant’s standing as an aggrieved person. Chapter 2 § 1(B) defines aggrieved person as “any person whom the Board determines may suffer particularized injury as a result of a licensing or other decision.” Further, if the Chair decides an appellant is not an aggrieved person, the Chair may dismiss the appeal. Such a dismissal by the Chair is appealable to the full Board.

The Chair dismissed Ms. Dowd’s appeal on August 12, 2011, stating that the appellant did not submit evidence that would establish she is an aggrieved person and thereby entitled to bring an appeal in this matter.

The appellant subsequently appealed the Chair's decision to the full Board on September 8, 2011 and submitted a letter to document her status as an "aggrieved person." In her September 8, 2011 letter to the Board, the appellant contends that she is an aggrieved person because she anticipates major drainage problems on her property and water in her basement as a result of the proposed development and she is aggrieved by the large scale pollution of the Royal River.

The Department's processing of the application took approximately four months. During the review process, the appellant did not contact the Department to discuss her concerns regarding the proposed development.

The Department reviewed the project location in relation to the location of the appellant's property in addition to the existing development of the surrounding area. The development in the vicinity of the project primarily consists of residential structures and roadways. The appellant's property does not directly abut the project site and is located across Hillside Street, in an easterly direction. The Department estimates that the southwestern corner of the appellant's property is located approximately 1,200 feet, straight-line distance, from the southeastern boundary of the project site and, approximately, an additional 200 feet to the southwestern corner of the appellant's residential structure. The stormwater management plan reviewed by the Department exhibits evidence that the post-development peak flow rate from the site will not exceed the pre-development peak flow rate. Further, the portion of the project that is located within the Royal River watershed drains to the northeast whereas the appellant's property is located easterly from the project site.

The Department reviewed the appellant's claim that she is aggrieved by the pollution of the Royal River. Ms. Dowd cites recent reports that state the mouth of the Royal River is the most polluted part of Casco Bay; however, given that the existing pollution is not part of the approved development, it can only be relevant if there are cumulative impacts. Ms. Dowd did not submit evidence in her appeal documents of the Chair's decision that would demonstrate how the development would increase the pollution of the Royal River. In addition, it is not stated how she will suffer particularized injury as a result of the pollution.

The Department recommends that the Board find the Ms. Dowd is not an aggrieved person and uphold the Board Chair's dismissal of her appeal of Department Orders #L-25260-L3-A-N and #L-25260-TC-B-N.

**Estimated Time:** 1 hour